

APPENDIX 'A'

Summary of Michigan's criminal procedure under her 'one-man grand jury system', its history and purposes.

For a clear understanding of the true function of Michigan's one-man grand jury it is essential to consider: (1st) her early relinquishment, State Const. 1850, article 6, § 28, of a constitutional guaranty, State Const. 1835, article 1, § 11, that 'no person shall be held to answer for a criminal offense, unless on the presentment or indictment of a grand jury'; (2nd) the special proceedings drawn in question here, authorized by law for extraordinary occasions,^[1] in which a judge of a court of record constitutes himself a one-man grand jury to investigate suspected criminal offenses by examining material witnesses;^[2] and (3rd) some of the purposes for which this law has been invoked by the State.

[1]

We lay aside any consideration of Michigan criminal procedure in due course for magisterial investigation of specific complaints charging offenses not cognizable by a justice of the peace, for the arrest of offenders, for the conduct of a preliminary examination, and for the filing of an information. Mich. Code of Criminal procedure, chapters 6 and 7, Comp. Laws 1929 § 17193 et seq. and § 17254 et seq., Stat. Ann. § 28,919 et seq. and § 28,980 et seq.

[2]

Idem., chap. 7 § § 3-6, Mich. Comp. Laws § § 17217-17220, Mich. Stat. Ann. § § 28,943-28,946.

Abolishment of traditional grand jury.

Article 1, § 11, of Michigan's first Constitution (1835), following somewhat the pattern of the 5th Amendment to the Federal Constitution, guaranteed that no person should be held for a criminal offense 'unless on the presentment or indictment of a grand jury', except in specified instances; but the Constitution of 1850, article 6, § 28, and Michigan's present Constitution (1908), article 2, § 19, omitted that requirement, and substituted therefor the 'right to be informed of the nature of the accusation'.^[3]

"In 1859 the regular calling of grand juries was dispensed with and provisions were made for prosecuting offenders by means of informations filed by the prosecuting attorney, although the grand jury was preserved as an institution of the court, to be invoked by the circuit judge if conditions should warrant".^[4]

Gillespie's Criminal Law and Procedure, Vol 1, § 99, pp. 101-102.

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This section of Michigan's bill of rights also guarantees inter alia 'a speedy and public trial', the right 'to be confronted by the witnesses', 'to have compulsory process', and to 'have the assistance of counsel'.

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The author of this statement observes by way of foot note that the Michigan legislature in 1931 (Act No. 284) provided for a permanent grand jury in every county of 70,000 population and upward, to meet twice in each year; and that in a little over one year, it appeared that the plan was not a success, and the statute was repealed (Act No. 31 Pub. Acts Mich. 1933).

The present law of Michigan [5] prohibits the drawing of grand juries unless the judge shall so direct.[6]

2

The Michigan 'One-man Grand Jury'.

The Michigan Code of Criminal Procedure, chap. 7, § § 3-6, incl.,[7] reenacts Act. No. 196, Pub. Acts 1917, as amended, the history of which is as follows:[8]

“After 1859 the 23-man Grand Jury Statute was not repealed, but became an extraordinary instrument called into use only occasionally, and then for the purpose of investigating widespread corruption, usually of an official character.

[5]

Section 7 of chapter 7 of the Michigan Code of Criminal Procedure provides that ‘grand juries shall not hereafter be drawn, summoned to attend at the sittings of any court within this state, . . . unless the judge thereof shall so direct by writing under his hand, and filed with the clerk of said court’ (Mich. Comp. Laws 1929 § 17221 [Mich. Stat. Ann. § 28.947]).

[6]

This discretion is seldom exercised, for in Michigan the ‘one-man grand jury’ has in recent years taken the place once occupied by the traditional 16-member grand jury. *People v. McCrea*, 303 Mich. 213 (cert. denied, 318 U.S. 783); *People v. Roxborough*, 307 Mich. 575 (cert. denied, 323 U.S. 749; and *In re Slattery*, 310 Mich. 458 (cert. denied, 325 U.S. 876).

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Mich. Comp. Laws 1929 § § 17217-17220, Mich. Stat. Ann. § § 28.943-28.946.

[8]

The quotation is from the majority report of a special committee of the Michigan State Bar. September 1947 Issue of Michigan State Bar Journal, pp. 55-62, at p. 58.

In 1885 a Michigan statute establishing the Detroit police court gave inquisitorial powers to police magistrates of a similar character to the one-man grand jury. In 1915 a Committee on Law Reform of the Michigan State Bar Association recommended the appointment of a Special Committee on Criminal Law and procedure. This Special Committee . . . concentrated its efforts on certain specific improvements in criminal procedure, and recommended a bill for the institution of proceedings for the discovery of crime, which was published as a part of the proceedings of the Michigan State Bar Association Journal in 1916.^[8a]

In 1917 this bill was passed by the Michigan Legislature and became the present One-Man Grand Jury Law. It authorizes a single judge to act as a Grand Juror in place of the 23-Man Grand Jury”.

The key that unlocks such power is supplied by section 3 of chapter 7, id. (Comp. Laws 1929 § 17217; Stat. Ann. § 28.943) which provides:

“Sec 3. Whenever by reason of the filing of any complaint, which may be upon information and belief, any justice of the peace, police judge or judge of a court of record shall have probable cause to suspect that any crime, offense, misdemeanor or violation of any city ordinance shall have been committed within his jurisdiction, and that any person may be able to give any material evidence respecting such offense, such justice or judge in his discretion may, and upon application of the prosecuting attorney, or city attorney

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Proceedings of the 26th annual meeting of the Michigan State Bar Association, 1916 pp. 101-115, at 103-105.

....., shall require such person to attend before him as a witness and answer such questions as such justice or judge may require concerning any violation of law about which he may be questioned; and the proceedings to summon such witnesses and to compel him to testify shall, as far as possible, be the same as proceedings to summon witnesses and compel their attendance and testimony, and such witnesses shall be entitled to the same compensation as in other criminal proceedings”.

If upon such inquiry the justice or judge shall be satisfied that any offense has been committed and that there is probable cause to suspect any person or persons to be guilty thereof, ‘he may cause the apprehension of such person or persons by proper process and, upon the return of such process served or executed, the justice or judge shall proceed with the case, matter of proceeding in like manner as upon formal complaint’.[9]

So far as secrecy is concerned, those participating in the inquiry ‘shall be governed by the provisions of law relative to grand juries’ (id., § 4 [Comp. Laws 1929, § 17218; Stat. Ann. § 28.944]).[10]

[9]

Also, if so satisfied, the justice or judge shall report the matter to the proper officials to the end that any public officer so accused may be removed from office. These are all considered to be ‘judicial acts’. In re Slaterry, 310 Mich. 458; cert. denied, 325 U.S. 876.

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Hence, it has been held, In re Slaterry, supra, that because of the secrecy of one-man grand jury proceedings, as provided in § 4, chap. 7, a transcript of such proceedings is not included in its entirety in the return to writs of habeas corpus or certiorari issued on petition by a witness who has been jailed for contempt in failing to give proper answers to question put to him in one-man grand jury proceedings.

Witnesses who neglect or refuse to appear upon summons of the one-man grand jury 'or to answer questions material to such inquiry' may be punished for contempt,[11] though the sentence imposed may in judicial discretion be commuted or suspended if the witness appears and answers such questions (id., § 5 [Comp. Laws 1929, § 17219; Stat. Ann. § 28.945]).

And under the provisions of § 6 of chapter 7 of the code (Comp. Laws 1929, § 17220 [Stat. Ann. § 28.946]), a witness who answers questions which might tend to incriminate him, is granted full immunity from prosecution for any offense concerning which he testifies.[12]

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Purposes for which Michigan one-man grand jury is employed.

It is at least worthy of note that the one-man grand jury law has been called into play in Michigan only when con-

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Such a proceeding in contempt is deemed criminal in nature. *In re Wilkowski*, 270 Mich. 787. See: *In re Ward*, 295 Mich. 742; *In re Cohen*, 295 Mich. 748; and *In re Slattery*, *supra*.

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This section of the code is in recognition of the state constitutional mandate that 'no person shall be compelled in any criminal case to be a witness against himself' (Mich. Const. 1908, article 2, § 16). It, of course, does no violence to the 5th or 14th Amendments to the Federal Constitution. *Adamson v. California*, Oct. Term 1946, No. 102, June 23, 1947, 67 Sup. Ct. 1672. Cf. *In re Watson*, 293 Mich. 263. And see: *In re Schnitzer*, 295 Mich. 736; *People ex rel. Roach v. Carter*, 297 Mich. 577; *People v. Reading*, 307 Mich. 616; *People v. Woodson*, 300 Mich. 391; *People v. Norwood*, 312 Mich. 266, in which the court repeatedly refers to such proceedings as those of a 'one-man grand jury'.

sidered necessary to the public interest, or where it was deemed important to investigate wide-spread corruption in high places. A few examples will suffice:

Thus, in a comparatively early case, a one-man grand jury investigated a rather vicious combination in restraint of trade intrastate,

People v. Butler, 221 Mich. 626.

The law in question was later used to investigate, charge, and convict^[13] a former mayor of the city of Hamtramck, high-ranking police officers of that municipality, and the proprietors of houses of prostitution, of a common-law conspiracy^[14] to obstruct justice by wilfully and corruptly permitting and allowing them to operate,

People v. Tenerowicz, 266 Mich. 276.

[13]

To say that this state law is used to 'convict', simply means that testimony of witnesses who appeared before the one-man grand jury, and, under compulsion of the fear of punishment for contempt, admitted their own guilt and implicated others, is adduced through the same witness at the trial unless he becomes wholly recalcitrant. See *Hemans v. United States*, No. 290 October 1947 term of this court. The law is thus made an effective instrument for evoking the truth. For, by way of analogy, 'a state may control such situation in accordance with its own ideas of the most efficient administration of criminal justice. The purpose of due process is not to protect an accused against a proper conviction'. *Adamson v. California*, *supra*.

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Common-law conspiracies are punishable under § 505 of the Michigan Penal Code (Stat. Ann. § 28.773) which makes it a felony to commit any indictable offense at the common law, 'for the punishment of which no provision is expressly made by any statute' of the State.

It was employed to investigate, charge, and convict the members of a legislative committee and others who attempted to conduct a recount of votes cast for candidates for state office, of a common-law conspiracy to violate provisions of the State's general election law,

In re Investigation of Recount, 270 Mich. 328;

People v. O'Hara, 278 Mich. 281.

Such a one-man grand jury investigated corrupt practices in Wayne county and charged the prosecuting attorney and his chief investigator, the sheriff and his deputy, together with the operators of houses of ill fame and other illegal enterprises, with a common-law conspiracy to obstruct justice by engaging in a 'protection money' scheme, and the defendants were later convicted,

People v. McCrea, 303 Mich. 213; cert. denied (October Term 1942; No. 651), 318 U.S. 783;

People v. Wilcox, 303 Mich. 287; and cases in sequence.

The same basic conspiracy was involved in a later group of cases where a one-man grand jury indicted and the State prosecuted and convicted the proprietors of gambling enterprises (numbers and mutuel), a former mayor of the city of Detroit and other law-enforcing agents, of a common-law conspiracy to obstruct justice by means of systematic bribery,

People v. Roxborough, 307 Mich. 575; cert. denied, 323 U.S. 749; and see cases in sequence, including

People v. Ryan, 307 Mich. 610, and *People v. Reading*, 307 Mich. 616.

The same one-man grand jury, investigating corruption in the county of Wayne, charged, and the people convicted police officers of the city of Detroit, the secretary of the mayor of that municipality (*People v. Reading, supra*), and the proprietors of 'hand books', of a common-law conspiracy to obstruct justice by means of 'protection money' or bribery.[15]

People v. Heidt, 312 Mich. 629;

People v. Bartlett, Reading et al., 312 Mich. 648, and cases following in sequence.

Such a grand jury investigation resulted also in the indictment of the mayor of Hamtramck for a conspiracy with other named defendants wilfully and corruptly to assist and enable the maintenance and operation of houses of ill fame and gambling establishments in that city, and thus to obstruct justice. Conviction was reversed for error in the charge of the trial judge,

People v. Kanar, 314 Mich. 242.

And, finally, a one-man grand jury in the county of Ingham (Lansing, the capital) indicted, and a petit jury convicted a member of the state senate and another of a

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We trust it is permissible to say, in the light of the conspiracy cases cited in this appendix, that were it not for Michigan's one-man grand jury system (however it may be criticized by its opponents), conviction of public officials who have been derelict in their trust, would be impossible.

criminal conspiracy to corrupt the legislature of the State of Michigan,[16]

People v. Delano et al., 318 Mich. 557.

[16]

In that case a motion for rehearing is pending, and we are informed by counsel for Delano that an application for certiorari from this Court is contemplated. Numerous other cases growing out of the Ingham county (Lansing) one-man grand jury are now pending on appeal in the Michigan Supreme Court.